COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

BAY STATE GAS COMPANY	)))))	D.T.E. 02-52

INITIAL BRIEF OF PETITIONER
BAY STATE GAS COMPANY

I. INTRODUCTION

On September 16, 2002, pursuant to G.L. c. 164, § 94A and 220 C.M.R. §1.04(1), Bay State Gas Company ("Bay State" or the "Company") submitted a Petition for Approval of (1) a Gas Supply Agreement between Bay State and EnCana Corporation ("Supply Agreement"), (2) an Agency Agreement ("Agency Agreement") between Bay State and Northeast Gas Markets ("NEGM"), and (3) a Management Services Agreement ("Management Services Agreement") between Bay State and NEGM, along with the prefiled testimony and exhibits of Francisco C. DaFonte. Pursuant to notice duly issued, the Commonwealth of Massachusetts Division of Energy Resources filed a timely petition to intervene. On October 24, 2002, the Department conducted a public hearing and procedural conference at which it granted DOER's Petition to Intervene. Bay State responded to information requests from DOER and the Department Staff and on November 4, 2002, the Department conducted an evidentiary hearing in this matter.

II. OVERVIEW OF PROPOSED AGREEMENTS

The Supply Agreement has an initial term commencing on January 15, 2003 and ending on February 1, 2003 and a primary term commencing February 1, 2003 and expiring April 1,

2005. Exhs. BSG-1, at 3, BSG-2. The Supply Agreement allows Bay State to take a maximum daily quantity ("MDQ") of 10,471 Dth/day; Bay State also retains the flexibility to reduce its MDQ by up to 100%. Exhs. BSG-1, at 3; BSG-2. The pricing of the initial term of the Supply Agreement is tied to the "Midpoint Price" contained in the Daily Price Survey published by Gas Daily for deliveries to Niagara. Exhs. BSG-1, at 3; BSG-2. The pricing of the primary term is also tied to the Gas Daily Price Guide published monthly by Gas Daily for deliveries at Niagara in the applicable month. Id.

The Administrative Agreement is entered into by and among NEGM, Bay State and the other participating LDCs and authorizes NEGM to act on each LDC customer's behalf as administrative agent for all purposes under and with respect to the individual gas supply agreements with EnCana. Exhs. BSG-1, at 3; BSG-3. These activities include submitting nominations to EnCana on behalf of the LDC, receiving invoices and making payments, declaring or receiving notice of force majeure conditions on behalf of the LDC, as well as all other necessary actions related to the Gas Supply Agreement, including preparation and filing of U.S. Customs forms and payments as well as other operational reports. Id., at 3-4.

The Management Services Agreement is also entered into by and among NEGM, Bay State and the other participating LDCs. The Management Services Agreement details the services to be rendered by NEGM on behalf of Bay State and the other LDCs, including NEGM's ability to act as administrative agent for the LDCs. Exh. BSG-1, at 4. The Management Services Agreement also outlines the compensation to be paid to NEGM for its activities on behalf of the LDCs with respect to the Gas Supply Agreement. Exhs. BSG-4, at 4; BSG-4.

III. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity under G.L. c. 164, § 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). To demonstrate that the acquisition of a commodity resource is consistent with the public interest, a local distribution company ("LDC") must demonstrate that at the time of the acquisition, the resource (1) compares favorably to the range of alternative options reasonably available to the company and its customers, and (2) is consistent with the company's portfolio objectives. Id. To establish consistency with a company's portfolio objectives, an LDC may rely on its most recently approved forecast and supply plan or may describe its objectives in the filing accompanying the proposed resource acquisition. Id. In comparing the proposed commodity resource acquisition to current market alternatives, the Department examines the relevant price and non-price attributes of each contract to ensure that it contributes to the strength of the overall supply portfolio. Id. at 28. The Department also considers whether the pricing terms are competitive with those for the broader range of options available at the time of the acquisition. Id. Finally, the Department assesses the non-price attributes of the proposed acquisition, including flexibility, reliability and diversity of supplies. Id. at 29.

IV. BAY STATE'S PROPOSED AGREEMENTS ARE CONSISTENT WITH THE PUBLIC INTEREST AND SHOULD BE APPROVED

Bay State's proposed agreements are fully consistent with the Department's standard and should be approved. As demonstrated in the Company's initial filing, the proposed Gas Supply Agreement, Agency Agreement and Management Services agreement represent the lowest price resources available to replace the expiring Boundary Gas supply. Exhs. BSG-1, BSG-2, BSG-3, BSG-4.

The Supply Agreement, Agency Agreement and Management Services Agreement will replace the existing Boundary Gas Inc. supply that will expire in January 2003. Exh. BSG-1, at 2; See, also, D.P.U. 94-16. Bay State selected this proposed commodity resource as part of the Boundary Gas Renewal Project working group ("working group"), which engaged in a comprehensive RFP process that resulted in a replacement supply for members of the Boundary LDC group. Exh. BSG-1, at 2. The RFP for replacement gas supplies was issued on November 21, 2001 and was provided to a list of thirteen qualified bidders that included many of the top 25 natural gas marketers as identified in the November 30, 2001 Gas Daily publication. Exhs. BSG-1, at 7; BSG-6. The RFP solicited combined replacement supply volumes on behalf of the LDC customers of 60,000-72,280 Dth/day, depending on final commitments and encouraged respondents to submit multiple volume options that would offer delivery flexibility. Exh. BSG-1, at 8. The LDC customers sought supply proposals for 14 or 26 months, to coincide with the end of the winter season. Exh. BSG-1, at 9. RFP respondents were also asked to submit bids with multiple pricing options.

In response to the November 2001 RFP, nine bids were received, one of which was inadequate and therefore was omitted from further consideration. Exh. BSG-1, at 9. In order to evaluate the bids properly, the bids were standardized for purposes of comparison to a NYMEX price and were then segregated into two groups based on the length of the term offered. Exh. BSG-1, at 10. Next the bids were subdivided by delivery point and finally divided into base load and swing flexibility offerings. Id. The bid price was weighted 30% of the total score in the evaluation process. Consistent with Bay State's practice and with Department precedent, the responses to the RFP were also analyzed to assess non-price criteria, including reliability/supply security (35%), flexibility (20%), and supplier viability (15%). Exh. BSG-1, at 11; Exh. BSG-10.

Based on the application of these criteria for evaluation, three top bids were selected, including EnCana. Exhs. BSG-1, at 11, BSG-11. The results showed that the bids at Niagara were the most competitive. Exh. BSG-1, at 11-12. Because the market had declined significantly since issuance of the RFP in November, 2001, the group decided to request that the three top bidders "refresh" their bids with respect to price, so that the LDC customers could take advantage of the low prices. The updated bids, received in January 2002, were again evaluated and after clarifications and negotiations with EnCana and Bidder B, whose refresher bids were comparable, EnCana was determined to have offered the lowest bid for all three services and was selected as the winning bidder. Exhs. BSG-1, at 13; BSG-15; BSG-16.

Bay State elected the 26-month option because the supply will enhance the reliability and price stability of its supply portfolio by offering a committed supply source at a known price over time. There is no demand charge associated with the Gas Supply Agreement. Further, Bay State has flexibility to decrease its nominations by as much as 100%, and thus has considerable flexibility under the Gas Supply Agreement to reduce its purchases as well as the associated costs. This flexibility allows Bay State to respond to potential changes in market conditions.

The results of the RFP, which was issued to a significant number of potential suppliers, clearly demonstrate that EnCana offered the lowest price and best non-price attributes available in the marketplace at the time it was selected. Bay State's selection of the EnCana supply is also consistent with Bay State's planning process, as most recently reviewed by the Department in D.T.E. 98-86. Exh. BSG-1, at 15-16. Bay State used a resource mix analysis, which allows the

SENDOUT ® model to choose the appropriate quantity of a range of resource alternatives over a given time period that contribute to a least-cost portfolio. For the planning horizon November 2002 through October 2005, the model opted to take 100% of the available MDQ provided in the EnCana supply alternative. Exh. BSG-1, at 14.

The EnCana supply is also consistent with the second element of the Department's standard of review. The EnCana supply consistently ranked at or near the top when compared to other bids on the basis of the non-price factors of reliability, flexibility and viability. Exh. BSG-1, at 16; BSG-15; BSG-16. The EnCana supply contributes to the diversity of Bay State's portfolio of resources. Further, EnCana has demonstrated its ability to offer a reliable supply.

The Agency and Management Services Agreements with NEGM allow for Bay State and other participating LDCs to jointly manage the EnCana supplies in an efficient manner, and to take advantage of NEGM's expertise in handling transactions of this nature. See, e.g., BSG-1, at 5. The costs associated with the NEGM Agreements have been considered in conjunction with the Gas Supply Agreement to determine that the supply choice is least cost. Exh. BSG-1, at 14. Further, NEGM possesses unique skills, having performed these same functions on behalf of the Boundary Group LDC customers, during the term of the current Boundary Agreement. Exh. BSG-1, at 5.

In sum, Bay State has demonstrated through its SENDOUT ® analysis and the RFP evaluation process that the EnCana resource option compares favorably to other market alternatives with respect to both price and non-price factors and thus is consistent with the Company's objective of a best-cost portfolio. Accordingly, Bay State asserts that the proposed agreements are consistent with the public interest and should be approved.

V. CONCLUSION

WHEREFORE, Bay State Gas Company respectfully requests that the Department approve its proposed Gas Supply Agreement between Bay State and EnCana Corporation, Agency Agreement between Bay State and Northeast Gas Markets, and the Management Services Agreement between Bay State and Northeast Gas Markets.

Respectfully submitted,

BAY STATE GAS COMPANY

By its attorney,

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Dated: November 11, 2002